

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Urmita Datta (Sen) Member (J) &
Hon'ble P. Ramesh Kumar, Member (A)

OA-873 of 2016

Sk. Absar Ali

Vs

The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;"><u>11</u> 11.10.2018</p>	<p>For the applicant : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the respondent : Mr. A.L. Basu, Learned Advocate.</p> <p style="text-align: center;">The instant application has been filed praying for following reliefs :-</p> <p style="text-align: center;">1) A direction do upon the concerned respondent authorities particularly upon the Superintendent of Police, North 24 Parganas being the Disciplinary authority of the applicant, being the respondent no. 3 herein, to forth set aside/cancel/quash the North 24 Parganas District Proceeding No. 02/2014 dated 18/03/2014, so drawn up against the applicant with a pre- determined set up of mind together with the impugned 2nd Show Cause Notice dated 08/08/2016 categorically aimed at awarding the harshest punishment of</p>	

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<p style="text-align: center;">11 11.10.2018</p> <p>Page /2</p>	<p>dismissal of the applicant from service, verily disproportionate even to the alleged guilt and to command them to act strictly in accordance with law;</p> <p>2) A direction do upon the concerned respondent authorities, to forthwith produce and/or cause to be produced entire records relating to the applicant's case and on such production being made, render conscionable justice upon perusal of the same;</p> <p>3) And to pass such order or further orders as to this Hon'ble Tribunal may deem fit and proper.</p> <p>As per the applicant, while posted at D.I.B., North 24 Parganas, he was charge sheeted on 18.03.2014 for alleged misconduct of 2nd marriage during the lifetime of his first wife without taking prior permission from the disciplinary authority (Annexure-A). In response to the said show cause notice, the applicant filed written statement of defence on 29.07.2016, wherein though he</p>	

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<p style="text-align: center;">11 11.10.2018</p> <p style="text-align: left;">Page /3</p>	<p>has admitted second marriage as per Muslim rites & Law, however, he had not taken prior permission of the authority for such second marriage and, therefore, had prayed for exoneration from the charges. Thereafter one Enquiring Officer was appointed, who submitted his findings after considering the statement of defence, witnesses and documents and come to the conclusion that being a government employee conducting marriage for second time during the lifetime of the first wife, that too, without prior permission of the disciplinary authority amounts to serious misconduct as per Govt. Memo dated 17.10.2016 and West Bengal Government Servants Conduct Rules, 1959 as well as other service rules.</p> <p style="text-align: center;">In pursuance to the said findings of the enquiring officer, the disciplinary authority issued second show cause notice dated 08.08.2016 proposing imposing of punishment of dismissal from service with regard to the applicant. Being aggrieved with, the applicant has preferred the instant application. However, during the course of pendency of the instant application, the disciplinary authority had passed his final order dated</p>	

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<p style="text-align: center;">11 11.10.2018</p> <p style="text-align: center;">P/4</p>	<p>05.09.2016. The applicant had filed one MA application being No. MA-07/2017 has challenged the said final order.</p> <p style="text-align: center;">During the course of hearing the counsel for the applicant has submitted that the applicant had conducted second marriage as per Muslim Law and Rights. However, he had not taken any prior permission from the authority and for such deviation; he should not be punished with dismissal from service as the misconduct with regard to the private dispute having no relation to the service condition or any heinous crime like murder or defalcation of money etc. Therefore, punishment imposed upon him should be revisited by the authority. The counsel for the applicant has also referred one judgement dated 05.10.2018 passed in OA-1198/2016 by this Bench and has prayed for extension of the benefit of the said judgement as the case of the applicant is fully covered by the said judgement.</p> <p style="text-align: center;">The counsel for the respondent has no objection to such proposition.</p>	

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<p style="text-align: center;">11</p> <hr/> <p>11.10.2018</p> <p style="text-align: right;">P/5</p>	<p style="text-align: center;">Heard both the parties and perused the record as well as judgement placed by the counsel for the applicant. It is noted that the applicant has himself admitted that he had conducted second marriage during the lifetime of his first wife as per the Muslim Law and rites but without taking prior permission from the competent authority. Therefore, the charges levelled against the applicant constitutes misconduct as per the service condition but it relates to private dispute, thus neither having any direct or adverse effect on the other service conditions of the applicant nor it relates any heinous crime like murder, defalcation of money etc. However, under the service rules, there are another provisions of punishment other than dismissal from service in case of such misconduct. Therefore, in our considered opinion, the judgement referred by the applicant is squarely applicable in the instant case. Accordingly, punishment of dismissal from service may be revisited by the authority otherwise the family of the petitioner may suffer due to no fault of them.</p>	

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<p>11 11.10.2018</p> <p>SC</p>	<p>In view of the above, we set aside and quash the second show cause notice dated 08.08.2016 and disciplinary authority's order dated 05.09.2016 and remanded back the matter to the disciplinary authority to revisit the quantum of punishment only without interfering the findings and to impose any other punishment other than dismissal within a period of 8 (eight) weeks from the date of communication of this order as provided in the service rules. However, we make it clear that in case of reinstatement, the applicant should not get any back wages between the period of dismissal and the period of re-instatement but the said period should be taken into consideration for retiral benefits only.</p> <p>Accordingly, OA is disposed of with the above observation with no order as to costs.</p> <p>Plain copy to both the sides.</p> <p>P. RAMESH KUMAR MEMBER(A)</p> <p>URMITA DATTA (SEN) MEMBER (J)</p>	

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